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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR             | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/007,800      | 12/07/2001  | Wouter Leonardus Joseph Hinrichs | 05032-00013         | 1838             |

22910 7590 09/09/2003

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EXAMINER

SPEAR, JAMES M

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 09/09/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/007,800

Applicant(s)

HINRICHS, ET AL

Examiner

JAMES M. SPEAR

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Jun 18, 2003
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 13-22 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 7-9, 11, 15, 20, and 21 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 5, 6, 10, 13, 14, 16-19, and 22 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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Following are new grounds of rejection.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4, 7-9, 11, 15, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 07099965 A. The reference shows a composition comprised of a fructan wherein the degree of polymerization can be 6. How the composition is made is not a basis for determining patentability of a composition, however in this instance the composition of the fructan and an active substance, cells, in a solution is freeze dried and would inherently provide a sugar glass form.

Claims 2, 3, 5, 6, 10, 13, 14, 16-19 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 12 has been canceled.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The EP 0 879 600 A1 reference shows inulin compositions comprised of active agents and various dosage forms which may be of interest. See page 4, lines 30-55. The Licari reference also shows pharmaceutical compositions of inulin. See column 5, lines 40-45, column 6, examples 5 and 7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James M. Spear whose telephone number is 703 308 2457. The examiner can normally be reached on Monday thru Friday from 6:30 AM to 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308 2927. The fax phone number for the organization where this application or proceeding is assigned is 703 872 9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1235.

James M. Spear

September 6, 2003

*James M. Spear*  
JAMES M. SPEAR  
PRIMARY EXAMINER  
A U 1615